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October 30

Mr. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Dear Mr. Barry:

This is in response to your letter of October 22, requesting our opinion as to whether Mr. Maurice MacDonald and Dr. Maurice Siegal are eligible to participate under the state's social security agreement. We understand that both of these individuals work at the State Hospital and are paid out of trust funds administered by Trustees of the Hospital. We further understand that the State Hospital budget made no reference to these positions and that the salaries are not paid from state funds. The Personnel Commission has ruled that neither of the individuals in question is a state employee.

It is the opinion of this office that the individuals in question are not state employees and, consequently, they are not eligible to participate in the state's social security program.

Revised Statutes Annotated 98:2 provides that with the exception of certain positions therein enumerated all positions in the state service shall be included in the state's classified system. It is clear that the positions in question do not fall within any exception listed in that section. In view of the ruling by the Division of Personnel these individuals cannot be considered members of the classified system. Since the positions in question are not provided for in the budget and since remuneration is not from state funds it is our opinion that the ruling of the Division of Personnel is correct.

Very truly yours,

Elmer T. Bourque  
Assistant Attorney General

ETB/T